

TITLE 175 HEALTH CARE FACILITIES AND SERVICES LICENSURE

CHAPTER 17 INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED

Note: In these draft regulations, proposed fee changes are found on page 12. Technical, editing, and writing style changes are made throughout the chapter. Other proposed changes will revise or add regulations on:

- ◆ Food code and construction codes, pages 3 and 25-26
- ◆ Renewal applications, page 9
- ◆ Events requiring notice to the Department, page 11
- ◆ Inspections, pages 12-16
- ◆ Background checks on direct care staff, page 19
- ◆ Disaster preparedness, page 23

17-001 SCOPE AND AUTHORITY: These regulations govern licensure of intermediate care facilities for the mentally retarded. The regulations are authorized by and implement the Health Care Facility Licensure Act, Neb. Rev. Stat. §§ 71-401 to 71-459.

17-001.01 These regulations apply to any facility where shelter, food and training or habilitation services, advice, counseling, diagnosis, treatment, care, nursing care, or related services are provided for a period of more than 24 consecutive hours to four or more persons residing at the facility who have mental retardation or related conditions, including epilepsy, cerebral palsy, or other developmental disabilities.

17-002 DEFINITIONS

Active treatment means treatment that meets the requirements specified in 42 CFR 483.440(a).

Activities of daily living (See definition of "Care".)

Adjoining means located to allow access without having to enter a general corridor area used or observed by other facility occupants.

Administrator means the operating officer of an Intermediate Care Facility for the Mentally Retarded and may include titles such as administrator, manager, chief operating officer, director or similar designation.

Admission date means the date of the individual's arrival at the facility.

Applicant means the individual, government, corporation, partnership, limited liability company or other form of business organization who applies for a license.

Care means the exercise of concern or responsibility for the comfort, welfare, and habilitation of persons, including a minimum amount of supervision and assistance with or the provision of personal care, activities of daily living, health maintenance activities, or other supportive services. For purposes of this chapter:

1. Activities of daily living means transfer, ambulation, exercise, toileting, eating, self-administered medication, and similar activities.
2. Health maintenance activities means noncomplex interventions which can safely be performed according to exact directions, which do not require alteration of the standard procedure, and for which the results and individual responses are predictable.
3. Personal care means bathing, hair care, nail care, shaving, dressing, oral care, and similar activities.

Caretaker means a parent, foster parent, family member, friend, or legal guardian who provides care for an individual.

CFR means the Code of Federal Regulations.

Complaint means any expression of concern or dissatisfaction.

Completed application means an application that contains all the information specified in 175 NAC 17-003 and includes all required attachments, documentation, and the licensure fee.

Dementia means the disorders characterized by the development of multiple cognitive deficits, including memory impairment, that are due to the direct physiological effects of a general medical condition (not including trauma), to the persisting effects of a substance, or to multiple etiologies such as the combined effects of cerebrovascular disease and Alzheimer's disease.

Department means the Department of Health and Human Services Regulation and Licensure.

Director means the Director of Regulation and Licensure.

Developmental disability (See definition of "Related Conditions".)

Direction and monitoring means, for the purpose of medication administration, the acceptance of responsibility for observing and taking appropriate action regarding any desired effects, side effects, interactions, and contraindications associated with the medication. Direction and monitoring can be done by a:

1. Recipient with capability and capacity to make informed decision about medications for himself or herself;
2. Recipient-specific caretaker; or
3. Licensed health care professional.

Elopement means to run or slip away from the licensed facility or service without the knowledge of staff.

Existing facility means a licensed health care facility or a facility whose construction or remodeling plans were approved by the Department prior to the effective date of 175 NAC 17.

Facility means an intermediate care facility for the mentally retarded.

Five rights means getting the right drug to the right recipient in the right dosage by the right route at the right time.

Food means nourishment or meals directly provided or arranged for the individual by the facility.

Food Code means the Nebraska Food Code as defined in Neb. Rev. Stat. § 81-2,244.01 and as published by the Nebraska Department of Agriculture, except for compliance and enforcement provisions.

Foreign when applied to corporations means all those created by authority other than that of the State of Nebraska.

Grievance means a written expression of dissatisfaction which may or may not be the result of an unresolved complaint.

Habilitation services (See definition of “Active Treatment.”)

Health care facility means a(n) ambulatory surgical center, assisted-living facility, center or group home for the developmentally disabled, critical access hospital, general acute hospital, health clinic, hospital, intermediate care facility, intermediate care facility for the mentally retarded, long-term care hospital, mental health center, nursing facility, pharmacy, psychiatric or mental hospital, public health clinic, rehabilitation hospital, skilled nursing facility, or substance abuse treatment center.

Health maintenance activities (See definition of “Care”.)

Individual means the person served. May also be referred to as person or individual or individual served.

ICF/MR means intermediate care facility for the mentally retarded.

Licensee means the individual, government, corporation, partnership, limited liability company, or other form of business organization legally responsible for the operation of the facility and to whom the Department has issued a license.

Medical practitioner means any licensed physician, osteopathic physician, dentist, podiatrist, optometrist, chiropractor, physician assistant, certified registered nurse anesthetist, advanced practice registered nurse, or nurse midwife.

Medication means any prescription or nonprescription drug intended for treatment or prevention of disease or to affect body function in humans.

Medication administration includes, but is not limited to:

1. Providing medications for another person according to the five rights;
2. Recording medication provision; and

3. Observing, monitoring, reporting, and otherwise taking appropriate actions regarding desired effects, side effects, interaction, and contraindications associated with the medication.

Medication aide means a person who is listed on the medication aide registry operated by the Department as provided in 172 NAC 95 and 96.

Mental retardation means significantly sub-average general intellectual functioning resulting in or associated with concurrent impairments in adaptive behavior and manifested during the developmental period.

NAC means Nebraska Administrative Code.

New construction means a facility or a distinct part of a facility in which services are to be provided and which is enlarged, remodeled or altered in any fashion or is built from the ground up on or after the effective date of 175 NAC 17.

New facility means a facility or a distinct part of a facility in which services are to be provided and which is not currently licensed as a health care facility. New facility also includes those facilities, which were previously licensed for care and treatment in another licensure category, that now intend to seek licensure in a different category.

Nurse assistant means any person, other than licensed registered or practical nurse, employed by the ICF/MR for the purpose of aiding a licensed registered or practical nurse through the performance of non-specialized tasks related to the personal care and comfort of individuals.

Nursing care means complex nursing interventions which require nursing judgement to safely alter standard procedures in accordance with the needs of the individual, which require nursing judgement to determine how to proceed from one step to the next, or which require a multidimensional application of the nursing process.

Personal care (See definition of "Care".)

Premises means a facility, the facility's grounds, and each building or grounds on contiguous property used for administering and operating a facility.

PRN means an administration scheme, in which a medication is not routine, is taken as needed, and requires assessment for need and effectiveness.

Qualified inspector means a professional architect or engineer licensed to practice in Nebraska, an official or employee of a local jurisdiction authorized by that jurisdiction to make inspections of particular building equipment or systems, or an individual certified by a nationally recognized organization to make such inspections.

Qualified mental retardation professional or QMRP means a person specified in 42 CFR 483.430(a).

Related conditions means conditions specified in 42 CFR 435.1009. A severe, chronic disability that meets all of the following conditions:

1. It is attributable to:
 - a. Cerebral palsy or epilepsy, or
 - b. Any other condition, other than mental illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons and requires treatment or services similar to those required for these persons;
2. It is manifested before the person reaches the age of 22;
3. It is likely to continue indefinitely; and
4. It results in substantial functional limitations in three or more of the following areas of major life activities:
 - a. Self care;
 - b. Understanding and use of language;
 - c. Learning;
 - d. Mobility;
 - e. Self-direction; and
 - f. Capacity for independent living.

Schematic plan means a diagram of the facility which describes the number and location of beds, the location of service areas, Life Safety Code construction and occupancy classifications locations, fire compartments, and Fire Marshal-approved points of safety.

Shelter means lodging directly provided or arranged for the individual by the facility.

Supervision means the daily observation and monitoring of individuals by direct care staff or oversight of staff by the administrator or administrator's designee.

Supportive services means those services which support personal care, provision of medications, activities of daily living, and health maintenance activities.

Terminally ill means that the individual has a medical prognosis that his or her life expectancy is six months or less if the illness runs its normal course.

Training means aggressive implementation of a systematic program of formal and informal techniques (competent interactions), continuously targeted toward the individual achieving the measurable behavioral level of skill competency specified in individual program plan objectives, conducted in all applicable settings, and conducted by all personnel involved with the individual.

Treatment means a therapy, modality, product, device, or other intervention used to maintain well being or to diagnose, assess, alleviate, or prevent a disability, injury, illness, disease, or other similar condition.

Unlicensed direct care staff means personnel who are not licensed, certified, or registered under the Uniform Licensing Law or other state laws governing the practice of health care and whose primary responsibility is to manage, supervise and/or provide direct care of individuals' daily

needs such as bathing, dressing, feeding, toileting, recreation, and reinforcement of active treatment. These include staff qualified as medication aides and nursing assistants.

17-003 LICENSING REQUIREMENTS AND PROCEDURES: Any person intending to establish, operate, or maintain an intermediate care facility for the mentally retarded must first obtain a license from the Department. An entity must not hold itself out as an intermediate care facility for the mentally retarded or as providing health care services unless licensed under the Health Care Facility Licensure Act. An applicant for an initial or renewal license must demonstrate that the facility meets the operational, care, treatment, and physical plant standards contained in 175 NAC 17.

17-003.01 Initial License: The initial license process occurs in two stages. The first stage consists of the applicant's submission of affirmative evidence of the ability to comply with the operational and physical plant standards contained in 175 NAC 17-006 and 17-007. The application is not complete until the Department receives documents specified in 175 NAC 17-003.01.

The second stage consists of the Department's review of the completed application together with an inspection of the facility. The Department determines whether the applicant meets the standards contained in 175 NAC 17 and the Health Care Facility Licensure Act.

17-003.01A Applicant Responsibilities: An applicant for an initial ICF/MR license must:

1. Intend to provide shelter, food and training or habilitation services, advice, counseling, diagnosis, treatment, care, nursing care, or related services are provided for a period of more than 24 consecutive hours to four or more persons residing at the facility who have mental retardation or related conditions, including epilepsy, cerebral palsy, or other developmental disabilities;
2. Comply with the applicable codes, guidelines, and standards specified in 175 NAC 17-007;
3. Submit a written application to the Department as provided in 175 NAC 17-003.01B;
4. Receive approval, in writing from the Department, of schematic plans and, if new construction, of construction plans; and
5. Notify the Department at least 30 working days prior to planned occupancy.

17-003.01B Application Requirements: The applicant may construct an application or obtain an application form from the Department. The application must include:

1. Full name of the facility to be licensed, street and mailing address, telephone number, and facsimile number, if any;
2. Type of facility to be licensed;
3. Name of the administrator;
4. Name(s) and address(es) of the facility owner(s);

5. Ownership type;
6. Mailing address of the owner;
7. Preferred mailing address for receipt of official notices from the Department;
8. List of names and addresses of all persons in control of the facility. The list must include all individual owners, partners, limited liability company members, parent companies, and members of boards of directors owning or managing the operations and any other persons with financial interests or investments in the facility. In the case of publicly held corporations, the individual owners listed must include any stockholders who own 5% or more of the company's stock;
9. Legal name of the individual or business organization (government, corporation, partnership, limited liability company, or other type) to whom the license should be issued and a statement that the individual or organization accepts the legal responsibility for compliance with 175 NAC 17;
10. Applicant's federal employer identification number, if not an individual;
11. Applicant's social security number if the applicant is an individual. (To ensure social security numbers are not part of public records and are used only for administrative purposes, applicants may submit social security numbers in a separate document.);
12. Number of beds;
13. Signature(s) of:
 - a. The owner, if the applicant is an individual or partnership;
 - b. Two of its members, if the applicant is a limited liability company;
 - c. Two of its officers, if the applicant is a corporation; or
 - d. The head of the governmental unit having jurisdiction over the facility to be licensed, if the applicant is a governmental unit;
14. Copy of the registration as a foreign corporation filed with the Nebraska Secretary of State, if applicant is a foreign corporation;
15. Schematic plans;
16. For new construction, construction plans completed in accordance with the Engineers and Architects Regulation Act, Neb. Rev. Stat. §§ 81-3401 to 81-3455. Construction plans and description must include the following:
 - a. Project name; description of the project with quantity and floor area information on bed, bathing, toileting, dining, and activity locations, and building systems; street address; and contact person;
 - b. Site plan, floor plans, elevations, wall and building sections, construction details, plumbing and electrical diagrams, and construction component schedules;
 - c. Complete list of names, titles, and telephone numbers of other authorities reviewing or inspecting the construction;
 - d. Upon Department request, any additional information that may be required for review, such as structural and mechanical calculations, electrical system calculations, and product and equipment information; and

- e. Certification, if any, from a licensed architect or engineer that the construction plan and any revisions thereof meet the requirements of 175 NAC 17-007;
- 17. Planned occupancy date;
- 18. Copies of zoning approval from the relevant jurisdiction;
- 19. Occupancy certificates issued by the State Fire Marshal or delegated authority; and
- 20. Required licensure fee specified in 175 NAC 17-004.09.

17-003.01C Department Responsibilities: The Department will:

- 1. Review the application for completeness;
- 2. Provide notification to the applicant of any information needed to complete the application;
- 3. Confirm, either by Department review or by accepting certification from an architect or engineer, that the schematic plans and, if new construction, the construction plans meet the standards of 175 NAC 17-007;
- 4. Upon receipt of the requested information, conduct an on-site inspection in accordance with 175 NAC 17-005; and
- 5. Issue or deny a license based on the results of the initial inspection.

17-003.01D Denial of License: See 175 NAC 17-008.01 and 17-008.02 for grounds and procedures for the Department's denial of an initial license.

17-003.02 Renewal Licenses

17-003.02A Licensee Responsibilities: The licensee must submit a written application to the Department. The licensee may construct an application or obtain an application form from the Department. The application must include:

- 1. Full name of the facility to be licensed, street and mailing address, telephone number, and facsimile number, if any;
- 2. Type of facility to be licensed;
- 3. Name of the administrator;
- 4. Name(s) and address(es) of the facility owner(s);
- 5. Ownership type;
- 6. Mailing address(es) of the owner(s);
- 7. Preferred mailing address for receipt of official notices from the Department;
- 8. List of names and addresses of all persons in control of the facility. The list must include all individual owners, partners, limited liability company members, parent companies, and members of boards of directors owning or managing the operations and any other persons with financial interests or investments in the facility. In the case of publicly held corporations, the individual owners listed must include any stockholders who own 5% or more of the company's stock;

9. Legal name of the individual or business organization (government, corporation, partnership, limited liability company, or other type) to whom the license should be issued and a statement that the individual or organization accepts the legal responsibility for compliance with 175 NAC 17;
10. Applicant's federal employer identification number, if not an individual;
11. Applicant's social security number if the applicant is an individual. (To ensure social security numbers are not part of public records and are used only for administrative purposes, applicants may submit social security numbers in a separate document.);
12. Number of beds;
13. Signature(s) of:
 - a. The owner, if the applicant is an individual or partnership;
 - b. Two of its members, if the applicant is a limited liability company;
 - c. Two of its officers, if the applicant is a corporation; or
 - d. The head of the governmental unit having jurisdiction over the facility to be licensed, if the applicant is a governmental unit;
- ~~14. Copy of the registration as a foreign corporation filed with the Nebraska Secretary of State, if applicant is a foreign corporation;~~
14. Occupancy certificates issued by the State Fire Marshal or delegated authority dated within the ~~42~~ 18 months prior to the license expiration date; and
15. Required licensure fee specified in 175 NAC 17-004.09.

17-003.02B Department Responsibilities: The Department will:

1. Send a notice of expiration and an application for renewal to the licensee's preferred mailing address not later than 30 days prior to the expiration date. The licensure renewal notice specifies:
 - a. Date of expiration;
 - b. Fee for renewal;
 - c. License number; and
 - d. Name and address of the facility;
2. Issue a renewal license when it determines that the licensee has submitted a completed renewal application;
3. Send to each licensee that fails to renew its license a second notice, which is the final notice and specifies that:
 - a. The licensee failed to pay its renewal fees or submit an application, or both;
 - b. The license has expired;
 - c. The Department will suspend action for 30 days following the date of expiration;
 - d. Upon receipt of the renewal fee and completed renewal application, the Department will issue the renewal license; and
 - e. Upon failure to receive the renewal fee and completed renewal application, the license will be lapsed; and

4. Place the facility license on lapsed status for nonpayment of fees if the licensee fails to renew the license. During this time, the facility may not operate. The license remains in lapsed status until it is reinstated.

17-003.02C Refusal to Renew: See 175 NAC 17-008.01 and 17-008.02 for grounds and procedures for the Department's refusal to renew a license.

17-003.03 Reinstatement from Lapsed Status: A facility requesting reinstatement of its lapsed license must submit to the Department an application for reinstatement and pay the required licensure fee specified in 175 NAC 17-004.09. The application must conform to the requirements specified in 175 NAC 17-003.02.

17-003.03A The Department will review the application for completeness and will decide if an onsite inspection is needed to determine compliance with the operation, care, treatment, and physical plant requirements of 175 NAC 17-006 and 17-007. The decision is based on the following factors:

1. The length of time that has transpired from the date the license was placed on lapsed status to the date of the reinstatement application; and
2. Whether the facility has provided care or treatment from the site under a license that is different from the lapsed license.

17-003.03B When the Department decides that a reinstatement inspection is warranted, it will conduct the inspection in accordance with 175 NAC 17-005.

17-003.03C When the Department decides that a reinstatement inspection is not warranted, it will reinstate the license.

17-003.03D Refusal to Reinstate: See 175 NAC 17-008.01 and 17-008.02 for grounds and procedures for the Department's refusal to reinstate a lapsed license.

17-004 GENERAL REQUIREMENTS

17-004.01 Separate License: An applicant must obtain a separate license for each type of health care facility or health care service that the applicant seeks to operate. All buildings in which services are provided must comply with 175 NAC 17-006, and if applicable, 175 NAC 17-007. A single license may be issued for:

1. A facility operating in separate buildings or structures on the same premises under one management;
2. An inpatient facility that that provides services on an outpatient basis at multiple locations; or
3. A health clinic operating satellite clinics on an intermittent basis within a portion of the total geographic area served by the health clinic and sharing administration with those clinics.

17-004.02 Single License Document: The Department may issue one license document that indicates the various types of health care facilities or health care services for which the entity is licensed.

17-004.03 Effective Date and Term of License: ICF/MR licenses expire on March 31st of each year.

17-004.04 License Not Transferable: A license is issued only for the premises and persons named in the application and is not transferable or assignable. Change of ownership (sale, whether of stock, title, or assets, lease, discontinuance of operations) or change of premises terminates the license. If there is a change of ownership and the facility remains on the same premises, the inspection in 175 NAC 17-005 is not required. If there is a change of premises, the facility must pass the inspection specified in 175 NAC 17-005.

17-004.05 Bed Capacity, Usage, and Location: The facility must not use more beds than the total number of beds for which the facility is licensed. Changes in the use and location of beds may occur at any time without Department approval for licensure purposes. The facility must not locate more individuals in a sleeping room/bedroom than the capacity for which the room was originally approved.

17-004.06 Change of Ownership or Location Premises: The licensee must notify the Department in writing ~~within five working days when~~ 30 days before a facility is sold, leased, discontinued, or moved to a new ~~location~~ premises.

17-004.07 Notification: An applicant or licensee must notify the Department in writing, by electronic mail, facsimile, or postal service:

1. At the time of license renewal, of any change in the use or location of beds;
2. At least 30 working days prior to the date it wishes to increase the number of beds for which the facility is licensed;
3. To request a single license document;
4. To request simultaneous facility or service licensure inspections for all types of licensure held or sought; ~~or~~
5. If new construction is planned, and submit construction plans for Department approval prior to any new construction affecting individual living and service portions of the facility. The Department may accept certification from an architect or engineer in lieu of Department review;
6. Within 24 hours of the death of any individual served that occurred due to an individual's elopement, suicide, or a violent act;
7. Within 24 hours if the facility has reason to believe that an individual's death was due to abuse or neglect by staff;
8. Within 24 hours of an accident or natural disaster resulting in damage to the physical plant and having a direct or immediate adverse effect on the health, safety, and security of individuals; or
9. Within 24 hours of all facility fires.

17-004.08 Information Available to Public: The licensee must make available for public inspection upon request, licenses, license record information, and inspection reports. This information may be displayed on the licensed premises.

17-004.09 Fees: The licensee must pay fees for licensure and services as set forth below:

1. Initial and renewal licensure fees:
 - a. 1 to 50 Beds \$1,000 \$1,550
 - b. 51 to 100 Beds \$1,025 \$1,750
 - c. 101 or more Beds \$1,050 \$1,950
2. Duplicate license: \$10
3. Refunds for denied applications:
 - a. If the Department did not perform an inspection, the license fee is refunded except for an administrative fee of \$25.
 - b. If the Department performed an inspection, the license fee is not refunded.

17-005 INSPECTIONS: To determine compliance with operational, care, treatment, and physical plant standards, the Department inspects each ICF/MR prior to and following licensure. The Department determines compliance through initial on-site inspections, review of schematic and construction plans, and reports of qualified inspectors. Re-inspections are conducted by on-site inspection or review of documentation requested by the Department.

17-005.01 Initial Inspection: The Department ~~may~~ will conduct an announced initial on-site inspection to determine compliance with 175 NAC 17-006 and 17-007. The inspection ~~may be conducted~~ will occur within 30 working days, or later if requested by the applicant, of receipt of a completed application for an initial license. The Department will provide a copy of the inspection report to the facility within ten working days after completion of an inspection.

17-005.02 Results of Initial Inspection

17-005.02A When the Department finds that the applicant fully complies with the requirements of 175 NAC 17-006 and 17-007, the Department will issue a license.

17-005.02B When the Department finds that the applicant has complied substantially but has failed to comply fully with the requirements of 175 NAC 17-006 and 17-007 and the failure(s) would not pose an imminent danger of death or physical harm to individuals ~~of~~ at the facility, the Department may issue a provisional license. The provisional license:

1. Is valid for up to one year; and
2. Is not renewable.

17-005.02C When the Department finds the applicant has one or more violations that create no imminent danger of death or serious physical harm and no direct or immediate adverse relationship to the health, safety, or security of the individuals of

the facility, the Department may send a letter to the facility requesting a statement of compliance. The letter will include:

1. A description of each violation;
2. A request that the facility submit a statement of compliance within ten working days; and
3. A notice that the Department may take further steps if the statement of compliance is not submitted.

17-005.02D The statement of compliance must indicate any steps that have been or will be taken to correct each violation and the estimated time to correct each violation. Based on the statement of compliance, the Department will take one of the following actions:

1. If the facility submits and implements a statement of compliance that indicates a good faith effort to correct the violations, the Department will issue either a regular license or a provisional license; or
2. If the facility fails to submit and implement a statement of compliance that indicates a good faith effort to correct the violations, the Department may deny the license.

17-005.02E When the Department finds the applicant fails to meet the requirements of 175 NAC 17-006 and 17-007 and the failure(s) would create an imminent danger of death or serious physical harm, the Department will deny the license.

17-005.03 Physical Plant Inspections: The Department will conduct inspections for conformity with construction plans and compliance with 175 NAC 17-007 for new construction in accordance with the following:

17-005.03A On-site progress inspections of the physical plant by qualified inspectors for conformity to construction documents and compliance with code requirements may occur at any time after construction has begun and prior to the concealment of essential components.

17-005.03B The Department will conduct an on-site final inspection of the physical plant prior to use or occupancy. In lieu of an on-site final inspection by the Department, the Department may accept a certification from a licensed architect or engineer that the physical plant meets the requirements of the Health Care Facility Licensure Act and 175 NAC 17-007, and that the facility is complete and ready for occupancy in accordance with Department-approved plans. The architect or engineer may construct a certification form or obtain a certification form from the Department.

17-005.03B1 The certification must state:

1. Name of the architect or engineer;
2. Name of the professional entity with which s/he is affiliated, if any;
3. Address and telephone number;

4. Type of license held, the state in which it is held, and the license number;
5. Name and location of the facility;
6. Name(s) of the owner(s) of the facility;
7. New construction had the building structure and plumbing rough-in inspected by a qualified inspector prior to the time these would be concealed and preclude observation; ~~and~~
8. All new construction, service areas, bedroom sizes, handrails, grab bars, hardware, building systems, protective shielding, privacy curtains, and other safety equipment are completed in accordance with approved construction plans; and
9. The facility is furnished, cleaned, and equipped for the care and treatment to be performed in compliance with 175 NAC 17-006, and approved for use and occupancy.

17-005.03B2 The certification must have attached to it:

1. Copies of documents from other authorities having jurisdiction verifying the facility meets the codes specified in 175 NAC 17-007.02A, and is approved for use and occupancy;
2. Copies of certifications and documentation from equipment and building system installers verifying that all equipment and systems installed are operating and approved for use and occupancy; and
3. Schematic floor plans documenting actual room numbers and titles, bed locations, capacity, and life safety information.

17-005.04 Timing of Compliance Inspections: The Department may, following the initial licensure of an intermediate care facility for the mentally retarded, conduct an unannounced inspection at any time it deems necessary to determine compliance with 175 NAC 17-006 and 17-007. The inspection may occur based on random selection or focused selection.

17-005.04A Random Selection: Each year the Department may inspect up to 25% of the intermediate care facilities for the mentally retarded based on a random selection of licensed intermediate care facilities for the mentally retarded.

17-005.04B Focused Selection: The Department may inspect a facility when the Department is informed of one or more of the following:

1. An occurrence resulting in individual death or serious physical harm;
2. An occurrence resulting in imminent danger to or the possibility of death or serious physical harm to individuals;
3. An accident or natural disaster resulting in damage to the physical plant and having a direct or immediate adverse effect on the health, safety, and security of individuals;
4. The passage of five years without an inspection;
5. A complaint alleging violation of the Health Care Facility Licensure Act or 175 NAC 17;

6. Complaints that, because of their number, frequency, or type, raise concerns about the maintenance, operation, or management of the facility;
7. Financial instability of the licensee or the licensee's parent company;
8. Outbreaks or recurrent incidents of physical health problems such as dehydration, pressure sores, or other illnesses;
9. Change of services, management, or ownership; or
10. Any other event that raises concerns about the maintenance, operation, services, or management of the facility.

17-005.05 Results of Compliance Inspections

17-005.05A When the inspection reveals violations that create imminent danger of death or serious physical harm or have a direct or immediate adverse effect on the health, safety, or security of individuals, the Department will review the inspection findings within 20 working days after the inspection. If the evidence from the inspection supports the findings, the Department will impose discipline in accordance with 175 NAC 17-008.03.

17-005.05B When the inspection reveals one or more violations that create no imminent danger of death or serious physical harm and no direct or immediate adverse effect on the health, safety, or security of individuals, the Department may request a statement of compliance from the facility. The statement of compliance must indicate any steps that have been or will be taken to correct each violation and the estimated time to correct each violation. Based on the statement of compliance, the Department will take one of the following actions:

1. If the facility submits and implements a statement of compliance that indicates a good faith effort to correct the violations, the Department will not take any disciplinary action against the license; or
2. If the facility fails to submit and implement a statement of compliance, the Department will initiate disciplinary action against the facility license in accordance with 175 NAC 17-008.

17-005.06 Re-Inspections

17-005.06A The Department may conduct re-inspections to determine if a facility fully complies with the requirements of 175 NAC 17-006 and 17-007. Re-inspection ~~will occur before a disciplinary action is modified or terminated, or a provisional license is converted to a regular license, within 90 days of the first inspection, or sooner if requested by the licensee. The re-inspection may occur after the Department:~~ may consist of an on-site inspection or a review of documentation requested by the Department. Re-inspection occurs:

1. ~~Receives a statement of compliance for the cited violations;~~
2. ~~Has imposed disciplinary action; or~~
3. ~~Has issued a provisional license; or~~
4. Has received a plan of correction for the cited violations.

1. After the Department has issued a provisional license;
2. Before a provisional license is converted to a regular license;
3. After the Department has imposed disciplinary action;
4. Before a disciplinary action is modified or terminated; or
5. After the Department receives a statement of compliance for cited violations.

17-005.06B Following a re-inspection, the Department may:

1. Convert a provisional license to a regular license;
2. Affirm that the provisional license is to remain effective; ~~or~~
3. Modify a disciplinary action in accordance with 175 NAC 17-008.02-; or
4. Grant full reinstatement of the license.

17-006 STANDARDS OF OPERATION, CARE AND TREATMENT: In addition to the requirements that follow in this section, the Department incorporates by reference in these regulations:

1. 42 CFR 483.410 – 483.480 (attached); and
2. Appendix J to the ~~Medicaid~~ State Operations Manual, Survey Procedures and Interpretative Guidelines for Intermediate Care Facilities for Persons with Mental Retardation. This publication is available from the Department or on the Internet at:
~~http://www.cms.hhs.gov/manuals/107_som/som107ap_j_intermcare.pdf~~
http://cms.hhs.gov/manuals/downloads/som107ap_j_intermcare.pdf

17-006.01 Licensee Responsibilities: The licensee of each ICF/MR must assume responsibility for the total operation of the facility. The licensee responsibilities include:

1. Monitoring policies to assure the appropriate administration and management of the ICF/MR;
2. Ensuring the ICF/MR is in compliance with all applicable state statutes and rules and regulations;
3. Ensuring quality services are provided to all individuals whether services are furnished directly by the facility or through contract with the facility;
4. Periodically reviewing reports and recommendations regarding the Quality Assurance/Performance Improvement program and implementing programs and policies to maintain and improve the quality of services;
5. Designating an administrator who is responsible for the management of the ICF/MR and defining the duties and responsibilities of the administrator in writing;
6. Notifying the Department in writing within five working days when a vacancy in the administrator position occurs including who will be responsible for the position duties until another administrator is appointed; and
7. Notifying the Department in writing within five working days when the vacancy of the administrator position is filled including the effective date and name of the person appointed.

17-006.02 Administration: The administrator is responsible for planning, organizing, and directing the operation of the ICF/MR. The administrator must report in all matters related to maintenance, operation, and management of the ICF/MR to the licensee and be responsible to the licensee. The administrator's responsibilities include:

1. Ensuring that the facility protect and promote the health, safety, and well-being of the individuals;
2. Maintaining staff appropriate to meet individuals' needs;
3. Designating a substitute, who is responsible and accountable for management of the ICF/MR, to act in the absence of the administrator;
4. Developing procedures which require the reporting of any evidence of abuse, neglect, or exploitation of any individual served by the facility in accordance with Neb. Rev. Stat. § 28-372 of the Adult Protective Services Act or in the case of a child, in accordance with Neb. Rev. Stat. § 28-711.

17-006.03 Staff Requirements: The facility must ensure all persons who provide a service to individuals meet applicable state laws. The facility must ensure that all persons for whom a license, certification or registration is required hold the license, certification or registration in accordance with applicable state laws.

17-006.03A Administrator: The ICF/MR must develop and implement policies and procedures to specify the responsibilities and qualifications of the administrator in accordance with Neb. Rev. Stat. §§ 71-6053 to 71-6068. The administrator of an ICF/MR must meet the requirements to be either a qualified mental retardation professional (QMRP) or a licensed nursing home administrator in the state of Nebraska.

17-006.03A1: To be a qualified mental retardation professional, the administrator must meet the qualifications specified in 42 CFR 483.430(a).

17-006.03A2: To be a nursing home administrator, the administrator must meet the requirements and hold a current license in accordance with Neb. Rev. Stat. §§ 71-6053 to 71-6068.

17-006.03B Nursing Assistant: The ICF/MR must develop and implement policies and procedures to specify the responsibilities and qualifications of the nursing assistant, and development and approval of a basic care course in accordance with Neb. Rev. Stat. §§ 71-6038 to 71-6039.

17-006.03B1 A nursing assistant may be utilized to perform the duties of aiding a licensed registered or practical nurse through the performance of non-specialized tasks related to the personal care and comfort of individuals.

17-006.03B2 A nursing assistant must have the following qualifications:

1. Be at least 16 years of age;
2. Cannot have been convicted of a crime rationally related to his or her practice involving moral turpitude;

3. Be able to speak and understand the English language or a language understood by a substantial portion of the facility's individuals; and
4. Successfully complete 20 hours of training in basic care within 120 days of initial employment in the capacity of a nursing assistant.

17-006.03B3 Basic Care Course: The provider must develop a basic care course, and submit it to the Department for approval. The course must be no less than 21 hours in duration and include at least 15 hours of basic personal care training, five hours of basic therapeutic and emergency procedure training and one hour of instruction on the responsibility to report suspected abuse or neglect in accordance with state law. The training must be administered by a licensed registered nurse.

17-006.03C Paid Dining Assistants: When the facility utilizes persons other than a licensed registered or practical nurse or a nursing assistant for the feeding of individuals, the facility must follow 172 NAC 105. Each facility must establish and implement policies and procedures:

1. To ensure that paid dining assistants providing assistance with feeding to individuals in the facility meet the qualification, training and competency requirements specified in 172 NAC 105;
2. To ensure that competency assessments and/or courses for paid dining assistants have been completed in accordance with the provisions of 172 NAC 105;
3. That specify how the facility will meet the role requirements at 172 NAC 105-004, which state that paid dining assistants must:
 - a. Only feed individuals who have no complicated feeding problems as selected by the facility based on the individual's latest assessment, individual program plan, and determinations by the licensed nurse that the individual's condition at the time of such feeding meets that plan and that the paid dining assistant is competent to feed that particular individual;
 - b. Work under the supervision of a licensed registered nurse or practical nurse who is on duty, physically present in the facility, and immediately available; and
 - c. Call a supervisor for help in an emergency;
4. That specify how the facility will meet the requirements at 172 NAC 105-007, which state that the facility must maintain:
 - a. A listing of all paid dining assistants employed at the facility and the number of hours worked; and
 - b. For each individual paid dining assistant:
 - (1) Verification of successful completion of an approved paid dining assistant training course and competency evaluation; and

- (2) Verification that the facility has made checks with the Nurse Aide Registry, the Adult Protective Services Central Registry, and the central register of child protection cases maintained by the Department of Health and Human Services if applicable; and
5. That address how supervision of paid dining assistants will occur and how paid dining assistants will be identified as single-task workers.

17-006.03D Criminal Background and Registry Checks: ~~The facility~~ Each ICF/MR must complete and maintain documentation of pre-employment criminal background and registry checks on each unlicensed direct care staff member.

17-006.03D1 Criminal Background Checks: The ICF/MR must complete criminal background checks through a governmental law enforcement agency or a private entity that maintains criminal background information.

17-006.03D2 Registry Checks: The ICF/MR must check for adverse findings on the following registries:

1. Nurse Aide Registry;
3. Adult Protective Services Central Registry;
4. Central Register of Child Protection Cases; and
5. Nebraska State Patrol Sex Offender Registry.

17-006.03D3 The facility must comply with 42 CFR 483.420 (d) (1) (iii) and Appendix J to the State Operations Manual, specifically interpretive guideline W152, in its hiring decisions. The facility must not employ staff with a conviction or prior employment history of child or adult abuse, neglect, or mistreatment

17-006.03D4 The facility must also:

1. Determine how to use the criminal background and registry information, except for the Nurse Aide Registry, in making hiring decisions;
2. Decide whether employment can begin prior to receiving the criminal background information; and
3. Document any decision to hire a person with a criminal background or adverse registry findings, except for the Nurse Aide Registry. The documentation must include how that decision was made and how the facility plans to reduce risk to individuals and provide protection, as necessary.

17-006.03D4 The facility must not employ staff with adverse findings on the Nurse Aide Registry regarding abuse or neglect of individuals served, or misappropriation of the property of individuals served.

17-006.04 Administration of Medication: The facility must establish and implement policies and procedures to ensure individuals receive medications only as legally prescribed by a medical practitioner in accordance with the five rights and prevailing professional standards.

17-006.04A Methods of Administration of Medication: When the facility is responsible for the administration of medication, it must be accomplished by the following methods:

17-006.04A1 Self Administration: The facility must allow individuals to self-administer medications if desired, with or without supervision, when the interdisciplinary team has determined the individual is capable to do so.

17-006.04A2 Licensed Health Care Professional: When the facility utilizes licensed health care professionals for whom medication administration is included in their scope of practice, the facility must ensure the medications are properly administered in accordance with prevailing professional standards.

17-006.04A3 Persons Other Than a Licensed Health Care Professional: When the facility utilizes persons other than a licensed health care professional in the provision of medications, the facility must follow 172 NAC 95 and 96. Each facility must establish and implement policies and procedures:

1. To ensure that medication aides who provide medications are trained and have demonstrated the minimum competency standards specified in 172 NAC 95-004;
2. To ensure that competency assessments and/or courses for medication aides have been completed in accordance with the provisions of 172 NAC 96-005;
3. That specify how direction and monitoring will occur when the facility allows medication aides to perform the routine/acceptable activities authorized by 172 NAC 95-005 and as follows:
 - a. Provide routine medication; and
 - b. Provide medications by the following routes:
 - (1) Oral, which includes any medication given by mouth, including sublingual (placing under the cheek and tongue) and buccal (placing between the cheek and gum) routes and oral sprays;
 - (2) Inhalation, which includes inhalers and nebulizers, including oxygen given by inhalation;
 - (3) Topical application of sprays, creams, ointments, and lotions and transdermal patches; and
 - (4) Instillation by drops, ointments, and sprays into the eyes, ears, and nose;
4. That specify how direction and monitoring will occur when the facility allows medication aides to perform the additional activities

authorized by 172 NAC 95-007 which include but are not limited to:

- a. Provision of PRN medications;
 - b. Provision of medications by additional routes including but not limited to gastrostomy tube, rectal, and vaginal; and/or
 - c. Participation in monitoring;
5. That specify how competency determinations will be made for medication aides to perform routine and additional activities pertaining to medication provision;
 6. That specify how written direction will be provided for medication aides to perform the additional activities authorized by 172 NAC 95-009;
 7. That specify how records of medication provision by medication aides will be recorded and maintained; and
 8. That specify how medication errors made by medication aides and adverse reactions to medications will be reported. The reporting must be:
 - a. Made to the identified person responsible for direction and monitoring;
 - b. Made immediately upon discovery; and
 - c. Documented in the individual's records.

The facility is responsible to review, follow up and take appropriate action regarding medication errors and adverse reactions to medications.

17-006.04A4 When the facility is not responsible for medication administration or provision of medication, the facility must maintain responsibility for the overall supervision, safety and welfare of the individual.

17-006.04A5 Disposal of Medications: Medications that are discontinued by the medical practitioner, and those medications which are beyond their expiration date, must be destroyed. The facility must identify who will be responsible for disposal of medications and the method to dispose of medications in a timely and safe manner.

17-006.05 Admission and Retention: The facility must develop and implement admission and retention policies and procedures to ensure admission only of individuals who have mental retardation or related conditions and are in need of an active treatment program and retention only of those individuals who have mental retardation or related conditions and are receiving and benefiting from active treatment unless the following exception applies to the individual.

17-006.05A Exception: If the facility chooses to participate in providing services to individuals who meet the exception to the retention requirements, the facility must develop and implement policies and procedures to address the retention of individuals who have been receiving and benefiting from active treatment in the ICF/MR and who have developed conditions where they no longer can benefit from

an active treatment program. These conditions are associated with aging, dementia, decline in health, and terminal illness. The facility must ensure the following:

1. Documentation from the individual's attending physician that the transfer or discharge of the individual would be harmful to their physical, emotional, or mental health;
2. Current and accurate assessments relevant to the individual's condition and needs;
3. The individual program plan or plan of care must document:
 - a. The continued stay is in the best interest of the individual, and that transfer or discharge would be harmful to the individual;
 - b. The interdisciplinary team rationale for the decision for continued stay;
 - c. The specific current needs of the individual; and
 - d. The plan and treatment approach to address the individual's current needs and conditions;
4. The facility must provide services to meet the individual's current needs and condition(s); and
5. The ICF/MR must primarily serve individuals who are receiving and benefiting from an active treatment program.

17-006.06 Quality Assurance/Performance Improvement: The facility must develop and implement a quality assurance/performance improvement program that is an ongoing, comprehensive, and proactive internal review of the facility to ensure and improve quality, appropriateness, efficiency, and effectiveness of services and supports to individuals. The program must maintain documentation of activities and include the following, but is not limited to:

1. Identification of responsible party;
2. Identification of problems, recommendations, and actions;
3. Identification of resolution; and
4. Recommendations for improvement.

17-006.07 Complaints and Grievances: The facility must establish and implement procedures for addressing complaints and grievances from individuals, employees and others.

17-006.07A The facility must have a procedure regarding submission of complaints and grievances available to individuals, employees and others.

17-006.07B The facility must document efforts to address complaints and grievances received in a timely manner.

17-006.08 Pets: The facility must assure that a facility-owned pet does not negatively affect individuals. The facility must establish and implement policies and procedures regarding pets that include:

1. An annual examination by a licensed veterinarian;
2. Current vaccinations as recommended by the licensed veterinarian which must include rabies for dogs, cats, and ferrets;
3. Provision of pet care necessary to prevent the acquisition and spread of fleas, ticks, and other parasites; and
4. Primary responsibility for care and supervision of the pet by facility staff.

17-006.09 Disaster Preparedness and Management: The facility must establish and implement disaster preparedness plans and procedures to ensure that individuals' care and treatment, safety, and well-being are provided and maintained during and following instances of natural (tornado, flood, etc.) and other disasters, disease outbreaks, or other similar situations. The plans and procedures must address and delineate:

1. How the facility will maintain the proper identification of each individual to ensure that care and treatment coincide with the individual's needs;
2. How the facility will move individuals to points of safety or provide other means of protection when all or part of the building is damaged or uninhabitable due to natural or other disaster. This must include:
 - a. Specification of the number and type of transportation vehicles that are to be used;
 - b. The method by which the vehicles will be accessed, whether owned and operated by the facility or under contract with another entity. If transportation is to be provided by a contracted entity, the name, address, telephone number, and the type of vehicle to be used must be included in the disaster preparedness plan; and
 - c. The timeline for transportation of individuals to points of safety;
3. How the facility will protect individuals during the threat of exposure to the ingestion, absorption, or inhalation of hazardous substances or materials;
4. How the facility will provide food, water, medicine, medical supplies, and other necessary items for care and treatment in the event of a natural or other disaster; and
5. How the facility will provide for the comfort, safety, and well-being of individuals in the event of 24 or more consecutive hours of:
 - a. Electrical or gas outage;
 - b. Heating, cooling, or sewer system failure; or
 - c. Loss or contamination of water supply.

17-007 PHYSICAL PLANT STANDARDS: The facility must be designed, constructed and maintained in a manner that is safe, clean, and functional for the type of services to be provided. The physical plant standards, which include support services, construction standards, building systems, and waivers, are set forth below.

17-007.01 Support Areas: The facility may share the following support service areas among detached structures, and with other licensed facilities.

17-007.01A Dietary: If food preparation is provided on site, the facility must dedicate space and equipment for the preparation of meals. If the facility's food

service provides for more than 16 individuals, the facility must comply with the Food Code.

Food service locations providing food service for 16 or fewer individuals, or used only for training or activity purposes, must develop policies and procedures to ensure the following:

1. Automatic dishwasher final rinse cycle temperature of not less than 150 degrees Fahrenheit;
2. Foods are stored, prepared, transported, and served at proper temperatures. Temperatures of potentially hazardous foods must be 45 degrees Fahrenheit or below or 140 degrees Fahrenheit or above at all times;
3. Food preparation and eating areas are maintained in a sanitary manner; and
4. All equipment and utensils, including dishes, glassware, and silverware used in the serving or preparation of food or drink for individuals is thoroughly cleaned after each use and stored in a manner to assure they are kept free of dust, insects, and contamination.

17-007.01A1 Food Code: The Department will deem an applicant or licensee to be in compliance with the food service physical environment and equipment portions of the Food Code when:

1. The facility is located in a jurisdiction where there is a local health authority that inspects the facility's on-site food service using the Food Code;
2. The facility has been issued a certificate or similar document by the local health authority as evidence of compliance with the Food Code; and
3. The facility has provided the Department with a copy of the certificate or other similar document issued by the local health authority. The document must have been issued within 18 months of the date the Department conducts the licensure inspection.

17-007.01A1a The facility must maintain compliance with the Food Code as evidenced by the Food Code compliance certificate not having been modified or terminated by the issuing local health authority.

17-007.01A1b The facility must notify the Department when the local health authority modifies or terminates the Food Code compliance certificate. The notification must be sent to the Department in writing within 15 days after the facility receives notification from the local health authority of any change.

17-007.01A1c Dietary Services: The Department will inspect dietary services provided by the facility to determine compliance with 175 NAC 17-007.01A to ensure that individuals' dietary needs are being met.

17-007.01A1d If the facility contracts with an entity to provide food service, the contractor must meet the requirements of the Food Code, and the facility must show proof of such approval to the Department.

17-007.01B Laundry: The facility must provide laundry services. Laundry service may be provided by contract or on-site by the facility.

17-007.01B1 Contract: If contractual services are used, the facility must have areas for soiled linen awaiting pickup and separate areas for storage and distribution of clean linen.

17-007.01B2 On-Site: If on-site services are provided, the facility must have areas dedicated to laundry.

17-007.01B2a Laundry areas must be provided and equipped with a washer and dryer.

17-007.01B2b When the facility launders items for more than one individual together, the bulk laundry area must be divided into separate soiled (sort and washer areas) and clean (drying, folding, and mending areas) areas. In new construction, the facility must provide a conveniently located sink for soaking and hand washing of laundry and a housekeeping room.

17-007.01C Waste Processing: The facility must provide areas to collect, contain, process, and dispose of waste produced within the facility in a manner to prevent the attraction of rodents, flies, and all other insects and vermin, and to minimize the transmission of infectious diseases.

17-007.01D Cosmetology and Barber: When provided, cosmetology and barber services must be in conformance with the Nebraska Cosmetology Act, Neb. Rev. Stat. §§ 340 to 3,238 and the Barber Act, Neb. Rev. Stat. §§ 71-201 to 71-248.

17-007.01E Pharmaceutical: If the facility provides pharmacy services as defined in Neb. Rev. Stat. §§ 71-1,142 to 71-1,147.61, the services must be provided in conformance with that law.

17-007.02 Construction Standards: The facility must be designed, constructed, and maintained in a manner to provide ICF/MR services. The standards are set forth below:

17-007.02A Codes and Guidelines

17-007.02A1 New Construction: New construction must comply with the following:

1. Building: Building Construction Act, Neb. Rev. Stat. §§ 71-6401 to 71-6407;

2. Plumbing: Plumbing Ordinance or Code, Neb. Rev. Stat. § 18-1915;
3. Electrical: State Electrical Act, Neb. Rev. Stat. §§ 81-2101 to 81-2143;
4. Elevators: Nebraska Elevator Code, Neb. Rev. Stat. § 48-418.12 and Department of Labor Regulations, 230 NAC 1;
5. Boiler: Boiler Inspection Act, Neb. Rev. Stat. §§ 48-719 to 48-743;
6. Accessibility: Nebraska Accessibility Requirements, State Fire Marshal Regulations, 156 NAC 1 to 12; and
7. Energy: Nebraska Energy Code, Neb. Rev. Stat. §§ 81-1608 to 81-1626, for construction initiated on or after July 1, 2005.

17-007.02A2 All Facilities: All facilities must comply with the following applicable codes and standards to provide a safe environment:

1. Fire Codes: Nebraska State Fire Code Regulations, State Fire Marshal, 153 NAC 1; and
2. The Food Code, Neb. Rev. Stat. § 81-2,244.01, as published by the Nebraska Department of Agriculture, except for compliance and enforcement provisions, and except as noted in 175 NAC 17-007.01A.

17-007.02A3 Existing and New Facilities: Existing and new facilities must comply with the physical plant standards contained in 175 NAC 17-007. The facility must maintain all building materials and structural components so that total loads imposed do not stress materials and components more than one and one-half times the working stresses allowed in the building code for new buildings of similar structure, purpose and location.

17-007.02B Conflicts in Standards: In situations where the referenced codes and guidelines conflict with 175 NAC 17, the adopted rules and regulations of the Department and the Nebraska State Fire Marshal will prevail.

17-007.02C Floor Area: Floor area is the space with ceilings at least seven feet in height and excludes enclosed storage, toilet and bathing rooms, corridors, and halls. The space beyond the first two feet of vestibules and alcoves less than five feet in width is not included in the required floor area. In rooms with sloped ceilings, at least half of the ceiling must be at least seven feet in height. Areas less than five feet in height are not included in the required floor area.

17-007.02D Dining/Activity Areas: The facility must provide adequate space for dining, socialization, and leisure activities.

17-007.02D1 The space must provide a minimum of 15 square feet per individual in existing facilities and 20 square feet per individual in new construction.

17-007.02D2 Dining/activity areas must not be used for sleeping, offices, or corridors.

17-007.02E Bathing Rooms: The facility must provide a bathing room consisting of a tub and/or shower equipped with hand grips or other assistive devices as needed or desired by the individual. The facility must have one bathing fixture per 20 licensed beds in existing facilities, and one fixture per eight licensed beds in new facilities and new construction.

17-007.02F Toilet Rooms: The facility must provide a room with a sink and toilet for individuals' use with one fixture per eight licensed beds in existing facilities, and one fixture per four licensed beds in new facilities and new construction.

17-007.02G Bedrooms: The facility must provide bedrooms that provide for sleeping, afford privacy, provide reasonable access to furniture and belongings, and accommodate the needs of the individual. All bedrooms must:

1. Not be accessed through a bathroom, food preparation area, laundry, office, or another bedroom;
2. Be located on an outside wall with an operable window with a minimum glass size of six square feet per individual in new construction and new facilities;
3. Contain at least 35 cubic feet of storage volume per individual in dressers, closets, wardrobes, or other similar types of storage;
4. Have 80 square feet of floor area for a single bed room and 60 square feet of floor area per individual in a multiple bed room; and
5. Not exceed four beds per room in existing facilities and two beds per room in new construction and new facilities.

17-007.02H Corridors: The facility's corridors must be wide enough to allow passage and be equipped as needed by the individuals with safety and assistive devices. All stairways and ramps must have handrails.

17-007.02I Doors: The facility's doors must be wide enough to allow passage and be equipped as needed by the individuals for privacy and safety.

17-007.02J Outdoor Areas: The facility must provide an outdoor area for individuals' use. It must be equipped and situated to provide for safety and the abilities of the individuals.

17-007.02K Emergency Telephone: The facility must provide non-coin operated telephone(s) in working order, accessible to individuals based on their needs, located on the premises for local calls and emergencies. Emergency numbers must be easily accessible near the telephone.

17-007.02L Privacy: The facility must provide window coverings to ensure visual privacy of the individuals.

17-007.03 Building Systems: The facility must have building systems that are designed, installed, and that operate in a manner to provide for the safety, comfort, and well being of the individuals.

17-007.03A Water and Sewer Systems: The facility must have and maintain an accessible, adequate, safe, and potable supply of water. Where an authorized public water supply of satisfactory quantity, quality, and pressure is available, the facility must be connected to it and its supply used exclusively.

17-007.03A1 The system for collection, treatment, storage, and distribution of potable water of a facility that regularly services 25 or more individuals must be constructed, maintained, and operated in accordance with all provisions of the Nebraska Safe Drinking Water Act and Title 179, Regulations Governing Public Water Systems.

17-007.03A2 The system for collection, treatment, storage and distribution of potable water in a facility that serves less than 25 individuals on a regular basis must be maintained and operated as if it were a public water system, in accordance with 179 NAC 2-002, 3 and 4. These facilities must report to the Department the result of all tests that indicate the water is in violation of the standards set out in 179 NAC 2-002 or 3. These facilities must construct all water wells in accordance with 178 NAC 12, ~~Rules and Regulations Governing a Private Water Well.~~ Water Well Construction, Pump Installation, and Water Well Decommissioning Standards.

17-007.03A3 The water distribution system must have anti-siphon devices and air-gaps to prevent potable water system and equipment contamination.

17-007.03A4 The facility must provide continuously circulated, filtered, and treated water systems as required for the services provided.

17-007.03A5 The facility must maintain a sanitary and functioning sewage system.

17-007.03B Hot Water System: The facility must maintain hot and cold water to all handwashing and bathing locations with water temperatures for the comfort and safety of each individual. Hot water temperatures must not exceed 120 degrees Fahrenheit.

17-007.03C Heating and Cooling Systems: The facility must provide a heating and air conditioning system for the comfort of the individuals and capable of maintaining temperatures of at least 70 degrees Fahrenheit during heating conditions and that does not exceed 85 degrees Fahrenheit during cooling conditions.

17-007.03D Ventilation System: The facility must provide exhaust and clean air to prevent the concentrations of contaminants which impair health or cause discomfort to individuals and employees.

17-007.03D1 Existing and new facilities must have adequate ventilation.

17-007.03D2 New construction must provide a mechanical exhaust ventilation system for windowless toilets, baths, and kitchens that provides five air changes per hour.

17-007.03E Electrical System: The facility must have an electrical system that has sufficient capacity to maintain the services that are provided and that provides proper grounds.

17-007.03E1 New construction and new facilities must have outlets that are ground fault circuit interrupter-protected in wet areas and within six feet of sinks.

17-007.03E2 ~~The facility must provide illumination levels to meet the needs of individuals. At a minimum the average illumination level must be as follows:~~ All facilities must provide the minimum average illumination levels as follows:

1. General purpose areas – 5 foot candles;
2. General corridors and individuals' living areas – 10 foot candles;
3. Personal care and food preparation areas – 20 foot candles; and
4. Activity areas – 30 foot candles.

17-007.03F Emergency Power System: If the facility provides services to individuals who need electrical life support equipment, the facility must maintain an emergency power system.

17-007.04 Waivers: The Department may waive any provision of 175 NAC 17 relating to construction or physical plant requirements of a licensed facility upon proof by the licensee satisfactory to the Department that:

1. The waiver would not unduly jeopardize the health, safety, or welfare of the persons residing in the facility,
2. The provision would create an unreasonable hardship for the facility, and
3. The waiver would not cause the State of Nebraska to fail to comply with any applicable requirements of Medicare or Medicaid so as to make the state ineligible for the receipt of all funds to which it might otherwise be entitled.

17-007.04A Unreasonable Hardship: In evaluating the issue of unreasonable hardship, the Department will consider the following:

1. The estimated cost of the modification or installation;
2. The extent and duration of the disruption of the normal use of areas used by persons residing in the facility resulting from construction work;
3. The estimated period over which the cost would be recovered through reduced insurance premiums and increase reimbursement related to costs;
4. The availability of financing; and

5. The remaining useful life of the building.

17-007.04B Waiver Terms and Conditions: A waiver may be granted under terms and conditions and for a period of time as are applicable and appropriate to the waiver. Terms and conditions and period of waiver include but are not limited to:

1. Waivers granted to meet the special needs of an individual remain in effect as long as required by the individual;
2. Waivers may be granted for a period of time that ends at the time the conditions of approval no longer exist;
3. Waivers may be granted to permit a facility time to come into compliance with the physical plant standards for a period of one year. Upon submission of proof of ongoing progress, the waiver may be continued for an additional year; and
4. An applicant or licensee must submit a request for waiver of any construction or physical plant requirements set forth in 175 NAC 17. An applicant for a waiver may construct a request for waiver form or obtain a form from the Department.

17-007.04C Denial of Waiver: If the Department denies a facility's request for waiver, the facility may request an administrative hearing as provided in the Administrative Procedure Act and the Department's rules and regulations adopted and promulgated under the APA.

17-008 DENIAL, REFUSAL TO RENEW, AND DISCIPLINARY ACTION

17-008.01 Grounds for Denial, Refusal to Renew, or Disciplinary Action

17-008.01A The Department may deny or refuse to renew an ICF/MR license for failure to meet the requirements for licensure, including:

1. Failing an inspection specified in 175 NAC 17-005;
2. Having had a license revoked within the two-year period preceding an application; or
3. Any of the grounds specified in 175 NAC 17-008.01B.

17-008.01B The Department may take disciplinary action against an ICF/MR license for any of the following grounds:

1. Violation of any of the provisions of the Health Care Facility Licensure Act or 175 NAC 17;
2. Committing, permitting, aiding, or abetting the commission of any unlawful act;
3. Conduct or practices detrimental to the health or safety of an individual or employee;
4. Failure to allow an agent or employee of the Department of Health and Human Services, the Department of Health and Human Services Finance and Support, or the Department of Health and Human Services

- Regulation and Licensure access to the facility for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of the departments;
5. Discrimination or retaliation against an individual or employee who has submitted a complaint or information to the Department of Health and Human Services, the Department of Health and Human Services Finance and Support, or the Department of Health and Human Services Regulation and Licensure;
 6. Discrimination or retaliation against an individual or employee who has presented a grievance or information to the office of the state long-term care ombudsman;
 7. Failure to allow a state long-term care ombudsman or an ombudsman advocate access to the facility for the purposes of investigation necessary to carry out the duties of the office of the state long-term care ombudsman as specified in 15 NAC 3;
 8. Violation of the Emergency Box Drug Act;
 9. Failure to file a report of payment made or action taken due to a liability claim or an alleged violation, as required by Neb. Rev. Stat. § 71-168.02;
 10. Violation of the Medication Aide Act; or
 11. Failure to file a report of suspected abuse or neglect as required by Neb. Rev. Stat. §§ 28-372 and 28-711.

17-008.02 Procedures for Denial, Refusal to Renew, or Disciplinary Action

17-008.02A If the Department determines to deny, refuse renewal of, or disciplinary action against a license, the Department will send a notice to the applicant or licensee by certified mail to the last address shown on its records. The notice will state the determination, including a specific description of the nature of the violation and the statute or regulation violated, and the type of disciplinary action pending.

17-008.02B The denial, refusal to renew, or disciplinary action becomes final 15 days after the mailing of the notice unless the applicant or licensee, within the 15-day period, makes a written request to the Director for an informal conference or an administrative hearing.

17-008.02C Informal Conference

17-008.02C1 At the request of the applicant or licensee, the Department will hold an informal conference within 30 days of the receipt of the request. The conference may be held in person or by other means, at the request of the applicant or licensee.

If the pending action is based on an inspection, the Department's representative at the conference will not be the individual who did the inspection.

17-008.02C2 Within 20 working days of the conference, the Department representative will state in writing the specific reasons for affirming, modifying, or dismissing the notice. The representative will send a copy of the statement to the applicant or licensee by certified mail to the last address shown in the Department's records and a copy to the Director.

17-008.02C3 If the applicant or licensee successfully demonstrates at the informal conference that the deficiencies should not have been cited in the notice, the Department will remove the deficiencies from the notice and rescind any sanction imposed solely as a result of those cited deficiencies.

17-008.02C4 If the applicant or licensee contests the affirmed or modified notice, the applicant or licensee must submit a request for hearing in writing to the Director within five working days after receipt of the statement.

17-008.02D Administrative Hearing

17-008.02D1 When an applicant or a licensee contests the notice and requests a hearing, the Department will hold a hearing in accordance with the Administrative Procedure Act (APA) and the Department's rules and regulations adopted and promulgated under the APA. Either party may subpoena witnesses, who must be allowed fees at the rate prescribed by Neb. Rev. Stat. §§ 33-139 and 33-139.01.

17-008.02D2 On the basis of evidence presented at the hearing, the Director will affirm, modify, or set aside the determination. The Director's decision will:

1. Be in writing;
2. Be sent by registered or certified mail to the applicant or licensee; and
3. Become final 30 working days after mailing unless the applicant or licensee, within the 30-day period, appeals the decision.

17-008.02D3 An applicant or a licensee's appeal of the Director's decision must be in accordance with the Administrative Procedure Act.

17-008.03 Types of Disciplinary Action

17-008.03A The Department may impose any one or a combination of the following types of disciplinary action against the license:

1. A fine not to exceed \$10,000 per violation;
2. A prohibition on admissions or re-admissions, a limitation on enrollment, or a prohibition or limitation on the provision of care or treatment;
3. A period of probation not to exceed two years during which the facility may continue to operate under terms and conditions fixed by the order of probation;

4. A period of suspension not to exceed three years during which the facility may not operate; and
5. Revocation, which is a permanent termination of the license. The licensee may not apply for a license for a minimum of two years after the effective date of the revocation.

17-008.03B In determining the type of disciplinary action to impose, the Department will consider:

1. The gravity of the violation, including the probability that death or serious physical or mental harm will result;
2. The severity of the actual or potential harm;
3. The extent to which the provisions of applicable statutes, rules, and regulations were violated;
4. The reasonableness of the diligence exercised by the facility in identifying or correcting the violation;
5. Any previous violations committed by the facility; and
6. The financial benefit to the facility of committing or continuing the violation.

17-008.03C If the licensee fails to correct a violation or to comply with a particular type of disciplinary action, the Department may take additional disciplinary action as described in 175 NAC 17-008.03.

17-008.03D Temporary Suspension or Temporary Limitation: If the Department determines that individuals are in imminent danger of death or serious physical harm, the Director may:

1. Temporarily suspend or temporarily limit the facility license, effective when the order is served upon the facility. If the licensee is not involved in the daily operation of the facility, the Department will mail a copy of the order to the licensee, or if the licensee is a corporation, to the corporation's registered agent;
2. Order the immediate removal of individuals; and
3. Order the temporary closure of the facility pending further action by the Department.

The Department will simultaneously institute proceedings for revocation, suspension, or limitation of the license, and will conduct an administrative hearing no later than ten days after the date of the temporary suspension or temporary limitation.

17-008.03D1 The Department will conduct the hearing in accordance with the Administrative Procedure Act and the Department's rules and regulations adopted and promulgated under the APA. Either party may subpoena witnesses, who must be allowed fees at the rate prescribed by Neb. Rev. Stat. §§ 33-139 and 33-139.01.

17-008.03D2 If a written request for continuance of the hearing is made by the licensee, the Department will grant a continuance, which may not exceed 30 days.

17-008.03D3 On the basis of evidence presented at the hearing, the Director will:

1. Order the revocation, suspension, or limitation of the license; or
2. Set aside the temporary suspension or temporary limitation.

If the Director does not reach a decision within 90 days of the date of the temporary suspension or temporary limitation, the temporary suspension or temporary limitation will expire.

17-008.03D4 Any appeal of the Department's decision after the hearing must be in accordance with the APA.

17-008.04 Reinstatement from Disciplinary Probation or Suspension, and Re-Licensure After Revocation

17-008.04A Reinstatement at the End of Probation or Suspension

17-008.04A1 Reinstatement at the End of Probation: A license may be reinstated at the end of probation after the successful completion of an inspection, if the Department determines an inspection is warranted.

17-008.04A2 Reinstatement at the End of Suspension: A license may be reinstated at the end of suspension following:

1. Submission of an application to the Department for renewal that conforms to the requirements of 175 NAC 17-003.02;
2. Payment of the renewal fee as specified in 175 NAC 17-004.09; and
3. Successful completion of an inspection.

The Department will reinstate the license when it finds, based on an inspection as provided for in 175 NAC 17-005, that the facility is in compliance with the operation, care, treatment and physical plant requirements of 175 NAC 17-006 and 17-007.

17-008.04B Reinstatement Prior to Completion of Probation or Suspension

17-008.04B1 Reinstatement Prior to the Completion of Probation: A licensee may request reinstatement prior to the completion of probation and must meet the following conditions:

1. Submit a petition to the Department stating:

- a. The reasons why the license should be reinstated prior to the probation completion date; and
- b. The corrective action taken to prevent recurrence of the violation(s) that served as the basis of the probation; and
2. Successfully complete any inspection the Department determines necessary.

17-008.04B2 Reinstatement Prior to Completion of Suspension: A licensee may request reinstatement prior to the completion of suspension and must meet the following conditions:

1. Submit a petition to the Department stating:
 - a. The reasons why the license should be reinstated prior to the suspension completion date; and
 - b. The corrective action taken to prevent recurrence of the violation(s) that served as the basis of the suspension;
2. Submit a written renewal application to the Department as specified in 175 NAC 17-003.02;
3. Pay the renewal fee as specified in 175 NAC 17-004.09; and
4. Successfully complete an inspection.

17-008.04B3 The Director will consider the petition submitted and the results of any inspection or investigation conducted by the Department and:

1. Grant full reinstatement of the license;
2. Modify the probation or suspension; or
3. Deny the petition for reinstatement.

17-008.04B4 The Director's decision is final 30 days after mailing the decision to the licensee unless the licensee requests a hearing within the 30-day period. The requested hearing will be held according to rules and regulations of the Department for administrative hearings in contested cases.

17-008.04C Re-Licensure After Revocation: A facility license that has been revoked is not eligible for re-licensure until two years after the date of revocation.

17-008.04C1 A facility seeking re-licensure must apply for an initial license and meet the requirements for initial licensure in 175 NAC 17-003.01.

17-008.04C2 The Department will process the application for re-licensure in the same manner as specified in 175 NAC 17-003.01.

The Department will reinstate the license when it finds, based on an inspection as provided for in 175 NAC 17-005, that the facility is in compliance with the operation, care, treatment, and physical plant requirements of 175 NAC 17-006 and 17-007.

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175 NAC 17